

# LIBERAL

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## Poetry.

### Midnight Watch of the Indian Warriors.

The moon, on high, is sailing through  
A sea of pale and cloudless blue;  
While to the earth—a mantle bright—  
She flings her clear and silver light;  
And all the rocks and flowing stream  
Send up to heaven a joyous gleam.  
Valley and forest all are still;  
Save where the voice of whippoorwill,  
With sudden note, and full of care,  
Keeps plaintive in the midnight air;  
Or owl, from top of scathed tree,  
Hoots out, with strange and lonely glee.

Proud forms are those that leave the shade  
Dark on the forest carpet laid;  
And firm, though silent, on their tread,  
Up the lone valley of the dead.  
They seek the spot where rest their sire,  
Keeping, with bow and arrow dire,  
Beneath the grass that rankly waves,  
Touched by the night-wind o'er their graves,  
The warriors of the forest fly.  
When the pale moonbeams wild did own  
The red man for his lord alone,  
But now the children of their race,  
Who show approach their burial place,  
Seek other hunting-grounds than these:  
The wisdom of their fathers' choice—  
Or chase the wolf, or grizzly bear,  
Or spotted deer, no longer there.  
No longer wait they by the stream  
To glide the trout and tiny beam;  
Nor where the catfishes are found,  
With music, can they linger there.  
But on, still onward are they pressed,  
To the grim mountains of the west:  
Destined, at last, to make their grave  
Beneath the western ocean's wave.

Lo! they have passed—that warrior band—  
Their blankets, folded proudly, round  
Their noble forms are wound—  
Among their fathers' graves they stand,  
Like stars, in the clear moonlight  
That fills the temple of the night.  
No tear comes gliding to their eye—  
From their proud hearts there evils noigh,  
But, stern and valiant, they stand  
Among the graves—that warrior band.

## Important Laws.

### Public Lands and Pre-emption.

We copy below the instructions issued to Registers and Receivers of the Land Offices, under the act of Congress of the 4th of September, 1841, with the necessary forms for proceeding under it, by the act itself, which, by the act of July 22d, 1854, was extended over Kansas and Nebraska. This act, with the instructions, are invaluable to those interested in making claims to locate in the Territory, and should be preserved with care, as the reader will have almost constant occasion to refer to it, as he will to acts and instructions published in each of our preceding numbers. The reader, by making himself familiar with those laws, will save the necessity of constant consultation with members of the legal profession in relation to his claims, and from much vexation for a want of knowledge as to his legal rights:

The individual claiming the benefits of the act of 1841, as amended by the act of 1843, must be:

1. Either a citizen of the United States, or have filed his declaration of intention to become a citizen, at the time of the settlement on which his claim is based.
2. Either the head of a family, or a widow, or a single man over the age of twenty-one years.
3. An inhabitant of the tract sought to be entered, upon which in person he has made a settlement and erected a dwelling-house, and otherwise improved said tract since the 1st of June, 1840, and prior to the time when applied for; which land must, at the date of the settlement, have had the Indian title extinguished, and been surveyed by the United States.

By the ninth section of the act of the 3d of March, 1843, the entry of a claim under the act of the 4th of September, 1841, may be made, although it may be for land not surveyed at the time of settlement, where such settlement was made prior to the 4th of September, 1841, and after the extinguishment of the Indian title.

A person failing in any one of these requisites can have no claim by virtue of this act.

A person bringing himself within each of the above requirements by proof satisfactory to the register and receiver of the land district in which the lands may lie, then pursuant to the rules hereinafter prescribed, will, after having taken the affidavit required by the act, be entitled to enter, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section, to include his residence; and he may avail himself of the same at any time prior to the day of the commencement of the public sale, including said tract where the land has not yet been proclaimed.

Where the land was subject to private entry at the date of the law, and a settlement had theretofore been made upon such land, or where the land shall have become or shall hereafter become subject to private entry, and after that period a settlement shall be made, which the settler is desirous of securing under this act, such notice of his intention must be given within thirty days after the date of such settlement. Such notice, in all cases, must be a written one, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act. The proof, affidavit, and payment must be made within twelve months after the date of such settlement.

Where the land has not been offered at public sale, and thus rendered subject to private entry, a similar "notice in writing" must be filed within three months after settlement, (or sooner, if the land is proclaimed for sale); and the proof, payment, and affidavit of the claimant must be made before the day fixed for the commencement of the public sale which shall include the tract claimed.

A person who has filed, or shall hereafter file, according to law, a declaratory statement for a tract of land subject to private entry, may enter the same after the twelve months from the time of his settlement shall have expired, without filing any proof of his right as a pre-emptor, provided he is the first applicant, after

that time, for the entry of the same at private sale.

The tracts liable to entry under these acts are some of the following descriptions:

1. A regular quarter section, notwithstanding its quantity, may be a few acres more or less than one hundred and sixty; or a quarter section, which, though fractional in quantity by the passage of a navigable stream through the same, is still bounded by regular sectional and quarter sectional lines.
2. A fractional section, containing not over one hundred and sixty acres, or any tract being a detached or anomalous survey, made pursuant to law, and not exceeding said quantity.
3. Two adjoining half quarter sections of the regular quarters mentioned in the first designation; or, two adjoining eighty acre subdivisions of the irregular quarters found on the north and west sides of townships, where more than two such subdivisions exist, or the excess may render them necessary, provided in the latter case the aggregate quantity does not exceed one hundred and sixty acres.
4. Two half quarter or eighty acre subdivisions of a fractional or broken section, adjoining each other, the aggregate quantity not exceeding one hundred and sixty acres.
5. A regular half quarter and an adjoining fractional section, or an adjoining half quarter subdivision of a fractional section, the aggregate quantity not exceeding one hundred and sixty acres.
6. If the pre-emptor should not wish to enter the quantity of one hundred and sixty acres, he may enter a single half quarter section, or an eighty acre subdivision of a fractional section.
7. One or more adjoining forty acre lots may be entered, the aggregate not exceeding one hundred and sixty acres.
8. A regular half quarter, a half quarter subdivision, or a fractional section, may each be taken with one or more forty acre subdivisions lying adjoining, the aggregate not exceeding over one hundred and sixty acres.

Forty acre tracts or quarter-quarter sections, are subject to entry, selection, or location, precisely in the manner that eighty acre tracts, or half quarter sections have heretofore been.

Only one person on a quarter section is protected by this law, and that is the one who made the first settlement, provided he shall have conformed to the other provisions of the law.

A person who has once availed himself of the provisions of this act, can not at any future period, or at any other land office, acquire another right under it.

No person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, is entitled to the benefits of this act.

No person who shall quit or abandon his residence on his own land, to reside on the public land in the same State or Territory, is entitled to the benefits of this act; and satisfactory proof must be furnished that he has not done so.

Land is not properly, legally surveyed, until the surveys made by the department are approved by the surveyor general; but in accordance with the spirit and intent of the law, and for the purpose of bringing the settler within its provisions, the land is to be construed as surveyed when the requisite lines are run on the field, and the corners established by a deputy surveyor.

No assignments or transfers of pre-emption rights can be recognized. The patents issue to the claimants, in whose names alone all entries must be made.

SUBJECT DESCRIPTIONS OF LAND WHICH ARE EXEMPTED FROM THE OPERATIONS OF THIS ACT.

1. Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, and lands reserved for salines or for other purposes.
2. Lands reserved for the support of schools.
3. Lands acquired by either of the last two treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandott tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of these acts.
4. Sections of land reserved to other sections of the States for the construction of any canal, railroad, or other public improvement.
5. Sections or fractions of sections included within the limits of any incorporated town.
6. Every portion of the public lands which has been selected as a site for a city or town.
7. Every acre or lot of land actually settled and occupied for the purposes of trade, and not agriculture.
8. All lands on which are situated any known salines or mines.

Persons claiming the benefits of this act, are required to file duplicate affidavits such as the law requires, and to furnish proof by one or more disinterested witnesses of the facts necessary to establish the three requisites pointed out in the commencement of these instructions, and that referred to in a succeeding place, in relation to the claimant not having quit or abandoned his residence on his own land.

The witnesses are to be first duly sworn or affirmed to speak the truth and the whole truth, touching the subject of inquiry, by some officer competent to administer oaths and affirmations; and, if not too inconvenient by reason of distance of residence from the landoffice of the district, or other good cause, must be examined by the register or receiver, and the testimony rendered to writing in their presence, and signed by each witness, and certified by the officer administering the oath or affirmation, who must also join in certifying as to the respectability and credit of each witness.

In case adverse claims shall be made to the same tract, each claimant will be

notified of the time and place of taking testimony, and allowed the privilege of cross-examining the opposite witnesses, and of producing counter proof, which will also be subject to cross-examination.

When, by reason of distance, sickness, or infirmity, the witnesses cannot come before the register or receiver, these officers are authorized to receive their depositions, which must be, in all other respects, conformable to the within regulations.

The proof furnished to the register or receiver, in all cases, should consist of a simple detail of facts merely, and not of statements in broad or general terms, involving conclusions of law. It is the exclusive province of the register or receiver to determine the legal conclusions arising from the facts. For instance, a witness will not be permitted to state that a claimant is the "head of a family," &c., following the words of the law, but must set forth the facts which he grounds such allegations; because such a mode of testifying substitutes the judgment of the witness for that of the register or receiver, and allows not only to determine the facts, but the law. A witness may possibly conscientiously testify that a minor son, living with a widowed mother, was the head of the family; and in another case, equally in point of fact, another witness, similarly conscientious, might testify that the widowed mother was at the head of the family. There can not be a uniform construction given to the law, if it is carelessly left to the opinion of every witness. Registers and receivers have, therefore, been instructed not to receive as testimony or proof a general statement, which embodies, in general terms, the conclusions of law, without stating the facts specifically.

The witnesses must state, if the pre-emptor be the "head of a family," the facts which constitute him such; whether a husband having a wife and children, or a widower, or an unmarried person under twenty-one years of age, having a family, either of relatives or others depending upon him, or hired persons, or slaves.

All the facts respecting the settlement in person, inhabitation, or personal residence, the time of commencement, the manner and extent of continuance, as well as those showing the apparent objects, should be stated.

It must be stated that the claimant made the settlement on the land in person; that he has erected a dwelling upon the land; that the claimant lived in it, and made it his home, &c. By this means, the register or receiver will be enabled to determine whether or not the requisites of the law have been complied with in any given case.

The only affidavit required of the claimant is that prescribed by the thirteenth section of the act of 1841. [See affidavit.] This affidavit must be taken before the register or receiver of the land district in which the land is situated, before an entry is permitted, and must be of the same date with the certificate of entry. An affidavit before any other person will not justify the entry of the land. Duplicates thereof must be signed by the claimant.

A claimant is bound to prove his right to enter the land embraced by his declaratory statement, if liable to the operations of the act. No transfer or assignment of his claims can be made by a claimant under the law of 1841. The law declares such "null and void."

The proof filed by every claimant must show the time of the commencement of the settlement.

The second section of the act of March 3, 1843, provides for the rights of parties who shall have died before consummating their claims, by the filing, in due time of all the papers essential to establish the same. If proof of such right shall be filed, and payment therefor be made by the executor, administrator, or one of the heirs, during the period prescribed by the law upon which the claim is founded, the entry may be made in the name of "the heirs" of the deceased claimant.

A patent on such an entry will cause the title to inure to said heirs, as if their names had been specially mentioned. In cases of this kind, the affidavit required of the pre-emptor will be taken by the person so filing the proof; and should such person be one of the heirs, he or she should be of age, and mind competent to appreciate the nature and obligation of an oath.

The fourth section of the act of 1843 declares it unlawful for an individual, who has once filed a declaration for one tract of land, to file at any future time a second declaration for another tract. This has reference to those required, under the fifteenth section of the act of 1841, for land subject at the time of settlement to private sale.

The fifth section requires that similar notices or declarations in writing should be filed by settlers, under the act of the 4th of September, 1841, on land not subject to private entry. These declarations are to be filed in the office of the register or receiver by every such settler within three months after his settlement.

By the sixth section, a claimant is authorized hereafter to file a declaration, under the law of the 4th of September, 1841, or to make an entry of a claim under it, although the time prescribed by the law for the filing of such declaration, or the making of entry shall have expired, provided the claimant was prevented, by vacancy in either the register's or receiver's office, from performing said act, or acts within such time, and shall perform the duties required by the law within the same period after the disability is removed.

"The law provides that 'if any person shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void.'"

"This date is all important for the purpose of determining in all cases whether the settlement was made within the proper time, and whether the declaratory statement was filed in due season, and the entry made within the legal period after the settlement."

as he would have had if such vacancy had not occurred."

The only things required of a purchaser of public lands are, that he shall make an application in writing to the register for the tract desired to be entered, and pay to the receiver the purchase-money. He will find a blank application at each land office where such purchase may be desired to be made.

AFFIDAVIT REQUIRED OF PRE-EMPTION CLAIMANT.

I, JOHN DOE, claiming the right of pre-emption under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September 4th, 1841, to the northwest quarter of section number two, of township number six north, of range number two west, subject to sale at Chicago, do solemnly swear (or affirm as the case may be) that I have never had the benefit of the right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the government of the United States, should inure, in whole or in part, to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

Sec. 14. And be it further enacted, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be, appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

Sec. 15. And be it further enacted, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of the same, and in the last within thirty days next after the date of such settlement, file with the register of the proper district, a written statement describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

Approved, September 4, 1841.

AN ACT for the relief of the citizens of towns upon the lands of the United States, under certain conditions.

Be it enacted, That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in each such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judges of the county in which such town or place is situated, to cause to be filed, in the office of the register or receiver of the land office, a written statement, to be signed by the corporate authorities thereof, or by the judges of the county, as the case may be, describing the land so settled and occupied, and the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

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Be it enacted, That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in each such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judges of the county in which such town or place is situated, to cause to be filed, in the office of the register or receiver of the land office, a written statement, to be signed by the corporate authorities thereof, or by the judges of the county, as the case may be, describing the land so settled and occupied, and the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

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